

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

SHERRI J. TENPENNY,	:	Case No. 1:05 cv 2248
	:	
Plaintiff,	:	JUDGE KATHLEEN O'MALLEY
	:	
v.	:	
	:	
UNITED STATES OF AMERICA, <i>et al.</i>,	:	ORDER
	:	
Defendants.	:	

This matter arises on the Defendants' motion to dismiss (Doc. 9). Upon preliminary review of the parties' filings in connection with that motion, the Court is inclined to believe that the statute of limitations should be equitably tolled by the Court's earlier (and apparently mistaken) belief that this action was not ripe for review when originally filed. Because this conclusion would require the Court to consider the Defendants' alternative arguments in support of dismissal, and such consideration would require consideration of "matters outside the pleadings," per Federal Rule of Civil Procedure 12, the Court **HEREBY GIVES NOTICE** of its intent to convert the Defendants' motion to a motion for summary judgment under Rule 56.

To effectuate this conversion, the Court hereby **TERMS** the present motion to dismiss (Doc. 9) and gives Defendants fourteen (14) days either to re-file their motion as a motion for summary judgment or to file a new motion. From the date of the Defendants' filing, Plaintiff shall have thirty (30) days to respond either by refiling her previous opposition or amending her opposition. From the date of the Plaintiff's filing, the Defendants shall then have thirty (30) days to file a reply brief. No additional briefing shall ensue absent leave of Court, which may only be sought upon written motion.

IT IS SO ORDERED.

s/Kathleen M. O'Malley

KATHLEEN McDONALD O'MALLEY
UNITED STATES DISTRICT JUDGE

Dated: August 23, 2006